

# U.S. Circuit Court Vacancies: Overview and Comparative Analysis

June 15, 2016

This Insight provides comparative historical data related to [U.S. circuit court](#) vacancies that existed at the beginning of the three most recent presidencies (Obama, George W. Bush, Clinton), as well as the number of vacancies that existed on June 1 of each President's eighth year in office. Data is also provided for the last day of the George W. Bush and Clinton presidencies (and the percentage change in the number of vacancies from the beginning to the end of each presidency).

This Insight also provides a geographic overview of the location of circuit court vacancies that existed on June 1 of President Obama's eighth year in office, as well the location of vacancies deemed "judicial emergencies" by the [Administrative Office of U.S. Courts](#).

As of this writing, Congress has authorized 179 circuit court judgeships. Vacant judgeships typically arise when a judge voluntarily retires, but can also occur as a result of a judge being elevated to the Supreme Court or dying while in office, being impeached or removed from office, or when new judgeships are authorized by Congress.

## Historical Vacancy Data

**Figure 1** shows the number of U.S. circuit court vacancies that existed at the beginning of each of the three most recent presidencies (on January 20 in 1993, 2001, and 2009, respectively), as well as the number of vacancies that existed on June 1 during the eighth year of each of the same presidencies (in 2000, 2008, and 2016, respectively). Data is also provided for the final day of the Clinton and George W. Bush presidencies (on January 19 in 2001 and 2009, respectively), and the percentage change in the number of vacancies from the beginning to end of each presidency.

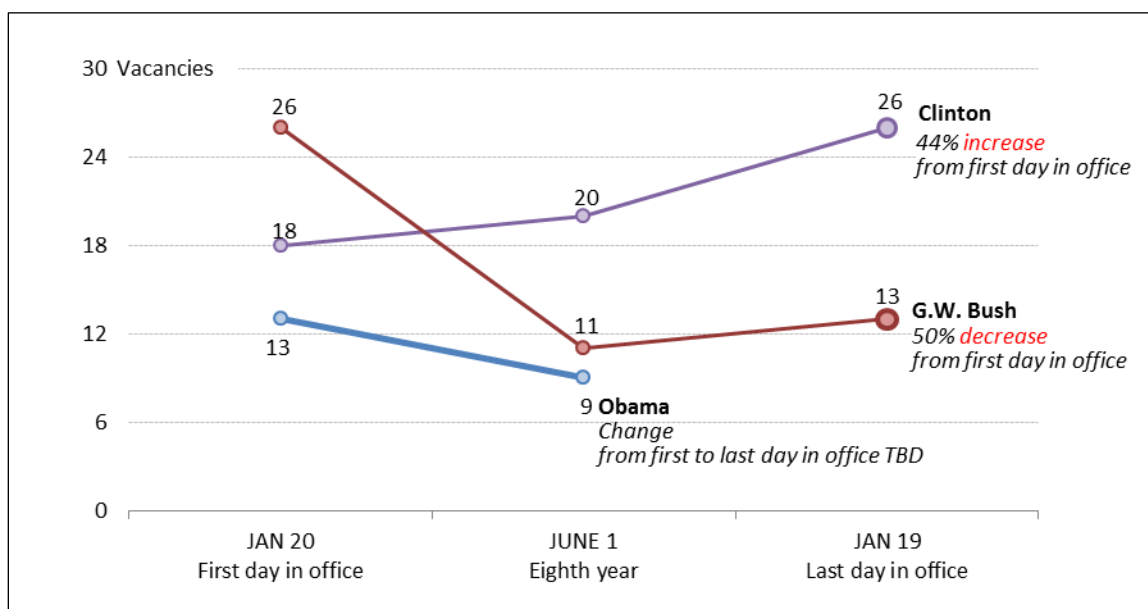
The number of circuit court vacancies during the Obama presidency decreased from January 20 (of his first year in office) to June 1 (of his eighth year). As shown by the figure, there were 13 circuit court vacancies on January 20, 2009 (the date on which President Obama was inaugurated) and 9 such vacancies on June 1, 2016—a 31% decrease. The number of circuit court vacancies decreased from January 20 of the first year in office to June 1 of the eighth year for President George W. Bush, and increased over the same time period for President Clinton.

Various factors will determine whether President Obama has fewer circuit court vacancies that exist at the end of his presidency than at the beginning (which, as **Figure 1** shows, would be consistent with the George W. Bush presidency and a change from the Clinton presidency). One factor is how many additional circuit court nominations are approved by the Senate prior to the end of the Obama presidency. At present there are seven nominations pending before the Senate (during the George W. Bush and

Clinton presidencies, two and one nominations were confirmed by the Senate, respectively, at some point after June 1 of each President's eighth year in office).

A second factor is how many more circuit court judgeships become vacant by the end of the Obama presidency. At present, [four circuit court judges](#) have announced their intention to step down from active service prior to President Obama leaving office. Given that there will be at least four circuit court vacancies prior to President Obama leaving office, whether there are fewer vacancies when he leaves office than when he assumed office (i.e., fewer than 13) will depend upon whether there are any unexpected vacancies (in addition to the impending four), as well as upon how many additional circuit court nominations are approved by the Senate prior to the end of the Obama presidency.

**Figure 1. U.S. Circuit Court Vacancies on Specified Dates during the Obama, G.W. Bush, and Clinton Presidencies**



**Source:** Congressional Research Service.

**Note:** Note that the time periods represented above (from a President's first day in office to June 1 of his eighth year in office, and from June 1 of his eighth year in office to his last day in office) do not reflect intervals of equal length of time.

## Vacancies Existing on June 1 of President Obama's Eighth Year in Office

At least one U.S. circuit court judgeship exists for over half of the nation's regional U.S. courts of appeals. Specifically, as of June 1, 2016, there were 9 vacant circuit court judgeships across 7 of 12 regional circuits (additionally, there were no vacancies on the [U.S. Court of Appeals for the Federal Circuit](#), a specialized court with national jurisdiction in certain types of cases).

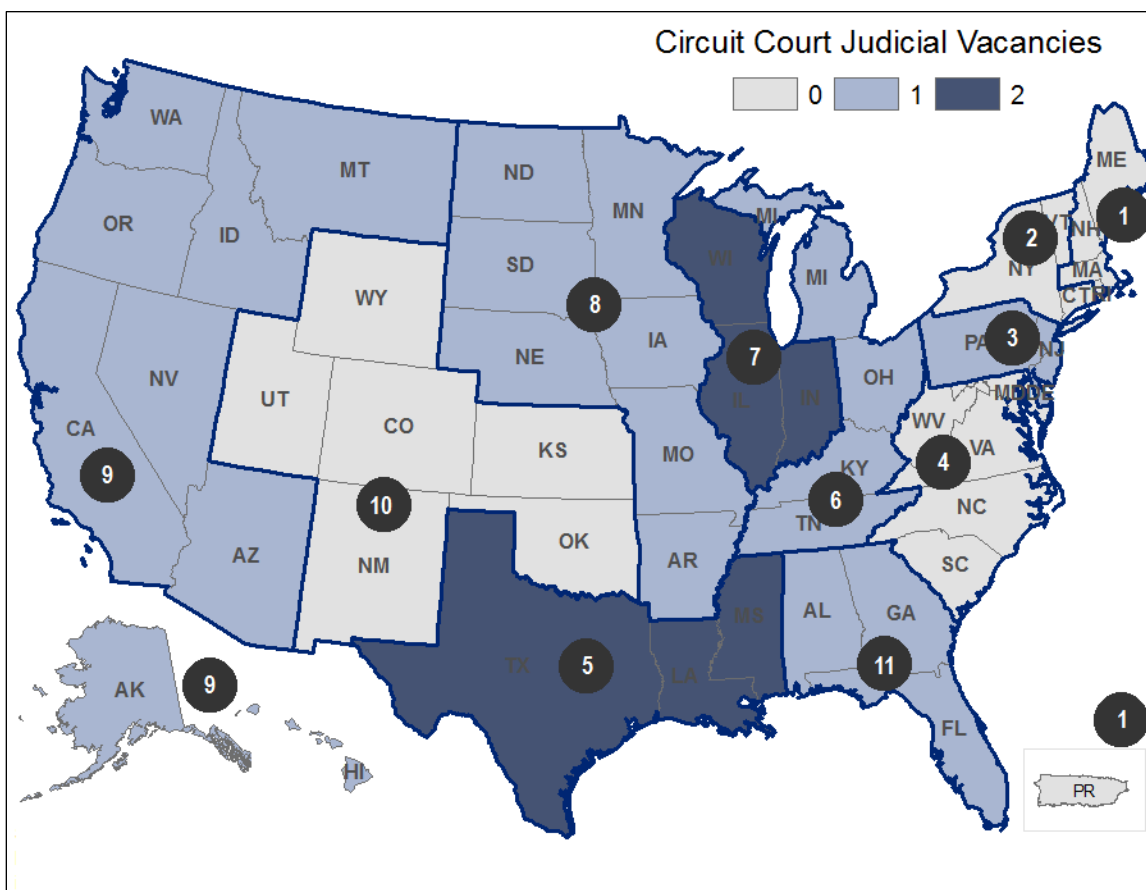
**Figure 2** shows the location of these vacancies, including the two circuits with more than one vacancy. At present the two circuits with the most vacancies are the U.S. Courts of Appeals for the [Fifth](#) and [Seventh Circuits](#), each with two.

Of the nine vacancies, seven have a nominee pending before the [Senate Judiciary Committee](#) and two of the vacancies have not yet had a nominee submitted to the Senate by the President. At present, there are no circuit court nominations pending on the [Senate Executive Calendar](#).

Of the nine vacancies, seven have existed for at least one year, while five have existed for at least two years—with the longest vacant judgeship located in the [Seventh Circuit](#) (vacant since January 7, 2010).

Of the seven vacancies that have existed for at least one year, five have a nomination pending before the Senate and two have not yet had a nomination submitted to the Senate by the President. Three of the five vacancies that have existed for at least two years have a nomination pending and two have not yet had a nomination submitted to the Senate.

**Figure 2. U.S. Circuit Court Vacancies (as of June 1, 2016)**



**Source:** Congressional Research Service.

**Note:** The U.S. Court of Appeals for the Federal Circuit, a specialized circuit court with national jurisdiction over certain types of cases, is not included in the map above. As of June 1, 2016, no vacancies existed on this court.

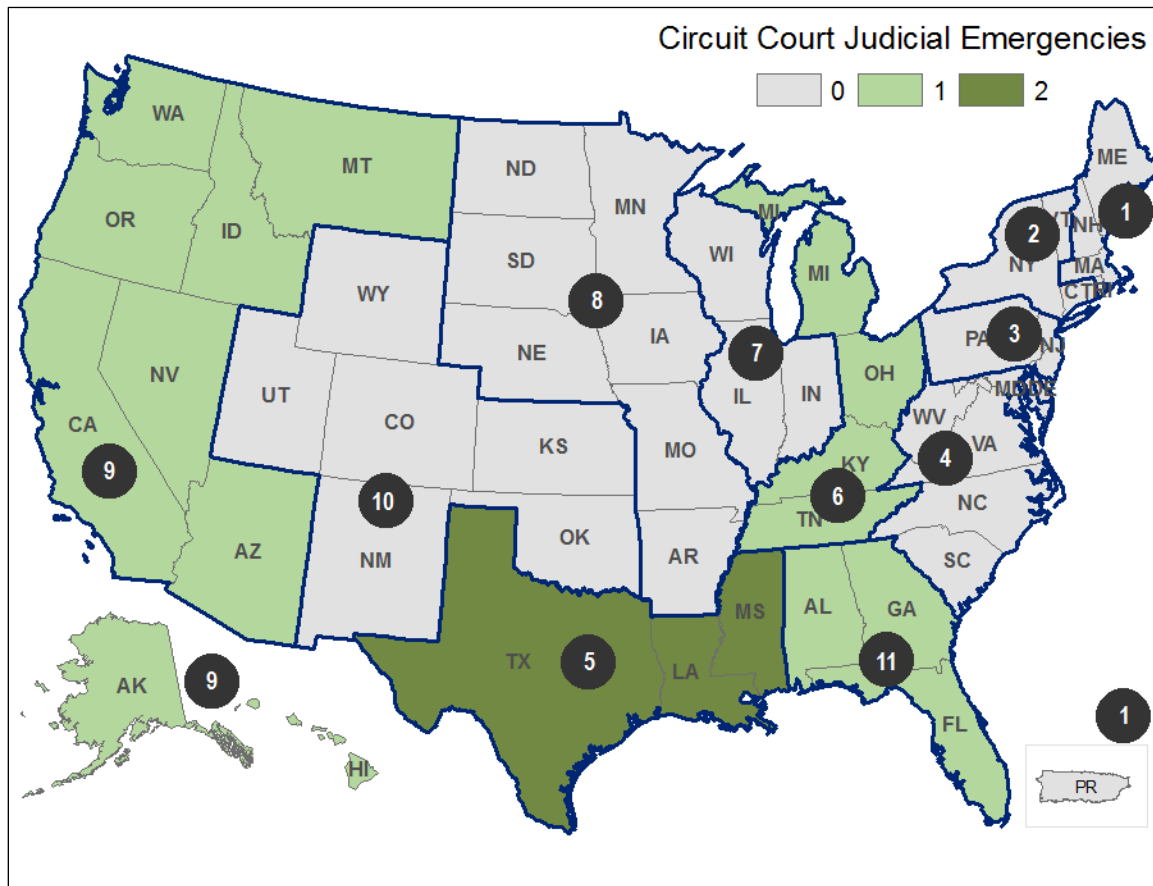
## Judicial Emergencies

Vacancies are classified as “judicial emergencies” by the Administrative Office of U.S. Courts [based on various criteria](#), including the number of case filings per judgeship and the length of time a particular vacancy has existed. **Figure 3** shows the location of vacancies, as of June 1, 2016, considered judicial emergencies.

Of the nine vacancies, five are classified by the Administrative Office of U.S. Courts as “judicial emergencies.” At present, two judicial emergencies exist in the Fifth Circuit (comprised of Louisiana, Mississippi, and Texas).

Of the five vacancies considered judicial emergencies, three have a nominee pending before the Senate Judiciary Committee. No nomination has yet been submitted for either of the two vacancies on the Fifth Circuit, the sole circuit court with more than one judicial emergency.

**Figure 3. U.S. Circuit Court Vacancies Considered Judicial Emergencies (as of June 1, 2016)**



**Source:** Congressional Research Service.

**Note:** The U.S. Court of Appeals for the Federal Circuit, a specialized circuit court with national jurisdiction over certain types of cases, is not included in the map above. As of June 1, 2016, no vacancies (and, consequently, no judicial emergencies) existed on this court.

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